

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSE MANUEL HENRIQUEZ and JOSE
HECTOR FUENTES, on behalf of themselves and
similarly situated employees,

12-CV-6233 (ADS) (GRB)

Plaintiffs,

-against-

KELCO LANDSCAPING INC., KELCO
LANDSCAPING CORP., ELM GENERAL
CONSTRUCTION CORP., KELLY'S CREW,
JOHN KELLY, JOSEPH PROVENZANO,

Defendants.
-----X

**ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, an action entitled *Jose Manuel Henriquez and Jose Hector Fuentes, on behalf of themselves and all others similarly situated v. Kelco Landscaping Inc. et al.*, No. 12-CV-6233 (ADS) (GRB) (the "Lawsuit") is currently pending before this Court;

WHEREAS, Plaintiffs have made application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order approving settlement of the claims alleged in the Lawsuit, in accordance with a Settlement Agreement signed March 2015 (the "Agreement"), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Lawsuit against Defendants and for dismissal of the Lawsuit against Defendants with prejudice upon the terms and conditions set forth therein, and the Court has read and considered the Agreement and the exhibits thereto;

With respect to certifying this action as a class action for settlement purposes, the Court finds:

1. The Settlement Class is so numerous that joinder of all members is impracticable;

2. There are questions of law and fact common to the proposed Settlement Class with respect to Defendants' compensation policies;

3. The individual claims of Plaintiff are typical of the claims of the Settlement Class;

4. Plaintiff is an appropriate and adequate representative for the Settlement Class;

5. With respect to the appointment of Settlement Class Counsel under Fed.R.Civ.P. 23, the Court finds that the attorneys at Frank & Associates, P.C. will fairly and adequately represent the interests of the Settlement Class;

6. With respect to the Proposed Stipulation of Settlement, the Court makes the preliminary finding, subject to a final Fairness Hearing, that the Settlement set forth in the Agreement is fair, reasonable, and adequate; and

THEREFORE, IT IS ON THIS ____ DAY OF _____, 2015 HEREBY ORDERED AS FOLLOWS:

7. The Court hereby preliminarily approves the Settlement set forth in the Agreement as being fair, just, reasonable, adequate and in the best interests of the Named Plaintiff and the Settlement Class as described in the Agreement;

8. The Fairness Hearing Shall be held before this Court, on _____, 2015 at the United States District Court, Eastern District of New York, U.S. Courthouse, 100 Federal Plaza, Central Islip, New York, to: (a) determine whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Agreement are fair, just, reasonable, adequate and in the best interests of the Class, and should be approved by the Court; and (b) whether an Order and Final Judgment of Dismissal, as provided in the Agreement, should be entered.

9. The Court approves, as to form and content, the Settlement Notice and finds that the mailing and distribution of the Settlement Notice substantially in the manner and form set

forth in this Order constitutes the best notice practicable under the circumstances, and constitutes valid, due and sufficient notice to all persons in the Settlement Class, complying fully with the requirement of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States and any other applicable laws.

10. Settlement Class Members entitled to contest approval of the terms and conditions of the proposed settlement, the judgment to be entered thereon if the same is approved, the attorneys' fees and expenses to be awarded to the Class Counsel, or any other matter, must serve Settlement Class Counsel, no later than forty-five (45) days after the date that the Class Notice is mailed, a statement of the objection setting forth the specific reason(s), if any, for the objection including any legal support that the Settlement Class Member wishes to bring to the Court's attention and any evidence that the Settlement Class Member wishes to introduce in support of the objection. Settlement Class Members may so act either on their own or through any attorney hired at their own expense. The Settlement Class Member, or attorney acting on her or her behalf, also must: (a) File a Notice of Appearance with the Clerk of Court no later than forty-five (45) days after the date that the Notice is mailed or as the Court may otherwise direct, and (b) serve a copy of such Notice of Appearance on all counsel for the Parties. Any member of the Settlement Class who does not make her or her objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Agreement, and the award of attorneys' and/or administrator's fees, costs and expenses to Class Counsel, and the award of Incentive Payments, unless otherwise ordered by the Court.

11. Settlement Class Members will be permitted to opt out of the Stipulation of Settlement by mailing their request to opt-out in writing to Class Counsel within forty-five (45) days after the date that the Notice is mailed.

12. Any actions required under the Agreement prior to the Fairness Hearing shall be carried out as set forth in the Agreement.

IT IS SO ORDERED:

United States District Judge

Dated: _____